

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EDWARD E. SEELY,

Plaintiff,

v.

SHERYL FOSTER, et al.,

Defendants.

3:16-cv-00020-RCJ-WGC

**ORDER**

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On June 28, 2016, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty days. (ECF No. 3 at 9:18-24).

The thirty-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's order. District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v.*

1       *King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule  
 2 requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*,  
 3 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*  
 4 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure  
 5 to comply with local rules).

6       In determining whether to dismiss an action for lack of prosecution, failure to obey a  
 7 court order, or failure to comply with local rules, the court must consider several factors: (1)  
 8 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its  
 9 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
 10 cases on their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d  
 11 at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-  
 12 61; *Ghazali*, 46 F.3d at 53.

13       In the instant case, the Court finds that the first two factors, the public's interest in  
 14 expeditiously resolving this litigation and the Court's interest in managing the docket, weigh  
 15 in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
 16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in  
 17 filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
 18 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy favoring disposition of cases  
 19 on their merits – is greatly outweighed by the factors in favor of dismissal discussed herein.  
 20 Finally, a court's warning to a party that his failure to obey the court's order will result in  
 21 dismissal satisfies the "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262;  
 22 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's order requiring  
 23 Plaintiff to file an amended complaint within thirty days expressly stated: "IT IS FURTHER  
 24 ORDERED that if Plaintiff chooses not to file an amended complaint curing the stated  
 25 deficiencies of the complaint, this action shall be dismissed without prejudice." (ECF No. 3  
 26 at 10:2-4). Thus, Plaintiff had adequate warning that dismissal would result from his  
 27 noncompliance with the Court's order to file an amended complaint within thirty days.

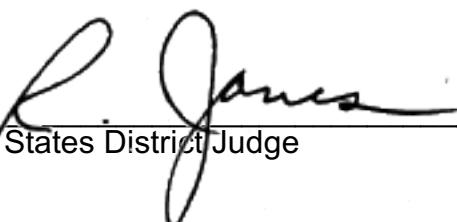
28       It is therefore ORDERED that this action is dismissed based on Plaintiff's failure to file

1 an amended complaint in compliance with this Court's June 28, 2016, order (ECF No. 3) and  
2 for failure to state a claim.

3 IT IS FURTHER ORDERED that Plaintiff's application to proceed *in forma pauperis*  
4 (ECF No. 1) is DENIED as moot.

5 It is further ordered that the Clerk of Court shall enter judgment accordingly.

6 DATED: August 30, 2016.

7   
8 \_\_\_\_\_  
9 United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28